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2 LEONARDO M. RAPADAS  
United States Attorney  
3 KARON V. JOHNSON  
Assistant U.S. Attorney  
4 Suite 500, Sirena Plaza  
108 Hernan Cortez Avenue  
5 Agana, Guam 96910  
Telephone: (671) 472-7332/7283  
6 Telecopier: (671) 472-7334

7 Attorneys for United States of America

**FILED**  
DISTRICT COURT OF GUAM

JUL 12 2007 *mba*

MARY L.M. MORAN  
CLERK OF COURT

8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE TERRITORY OF GUAM**

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 vs. )  
14 BRIAN WILLIAM ELM, )  
15 Defendants. )  
16

CRIMINAL CASE NO. 07-00026

**GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
GRAND JURY TRANSCRIPTS**

17 Federal Rule of Criminal Procedure 6(e)(3)(C)(ii) allows the court to release grand jury  
18 transcripts to the defense "upon a showing that grounds may exist for a motion to dismiss the  
19 indictment because of matters occurring before the grand jury." The defense must make a  
20 particularized need for such a disclosure: "(1) that the desired material will avoid a possible  
21 injustice, (2) that the need for disclosure is greater than the need for continued secrecy, and (3)  
22 that only the relevant parts of the transcripts should be disclosed." Douglas Oil Co. V. Petrol  
23 Stops Northwest, 441 U.S. 221, 229 (1979). Defendant must provide evidence to support  
24 whatever impropriety he claims occurred before the grand jury. United States v. Perez, 67 F.3d  
25 1371, 1381 (9<sup>th</sup> Cir. 1995).


26 The only grounds defendant advances is that the government reputedly said it could rely  
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1 upon the lesser standard of proof provided by 18 U.S.C. § 1623(c) because defendant made two  
2 prior inconsistent statements, and perhaps this incorrect theory was propounded to the grand  
3 jury. The transcript of the hearing where this statement is supposed to have been made, which  
4 has been attached as Exhibit 1 to the government's response to defendant's motion to dismiss,  
5 clearly reflects the government never said any such thing. Thus, defendant has failed to show  
6 any particularized need for access to the grand jury transcripts.

7 Respectfully submitted this 12<sup>th</sup> day of July, 2007.

8 LEONARDO M. RAPADAS  
9 United States Attorney  
Districts of Guam and NMI

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11 By:

  
12 KARON V. JOHNSON  
13 Assistant U.S. Attorney  
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